IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7590 OF 2005.

The Employees State Insurance
Corporation. ... Petitioner.

V/s.

M/s.Reshma Constructions. ... Respondent.

A.J.Jadhav for the petitioner.

G.S.Hegde i/b. M.S.Shetty for the respondent.

CORAM: V.C.DAGA, J.

DATED: 24th November 2005.

P.C.:

. Heard learned counsel for the rival parties. Perused petition and the documents produced.

2. This petition is at the instance of Employees State Insurance Corporation, who is in the occupation of the suit premises as a tenant.

3. The factual matrix of the case reveals that the plaintiff filed suit for eviction and possession of suit premises in the Small Causes Court at Bombay being T.E. & R. Suit No.88 of 2002 against the petitioner- tenant- Corporation contending that the Corporation has no statutory

protection under the Maharashtra Rent Control Act, 1999 and, as such, they are non-statutory/ ordinary tenant governed by the provisions of Transfer of Property Act, 1882.

4. The plaintiff treating the petitioner-Corporation as non-statutory/ ordinary tenant terminated its tenancy by issuing notice dated 12th December, 2000 under section 106 of the Transfer of Property Act, 1882 ("T.P.Act" for short) which was received by the tenant-Corporation on 20th December, 2000. Service of notice and receipt thereof is not in dispute. The relevant part of the notice having effect of terminating tenancy reads as under:-

> "..... I hereby do and call upon you to quit vacate and handover the possession of the said premise within one month next after the month of your current month's tenancy in which you receive this notice, failing which my client will be constrained to initiate appropriate legal proceedings against you for ejectment and you will be held liable for all costs and expenses which my client may have to incur in that behalf."
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> (Emphasis supplied)

5. It is not in dispute that the contents of notice are in consonance with the provisions of section 106 of the Transfer of Property Act. It

gives clear more than 15 days notice. Notice was received on 20th December, 2000. The notice period as per the text of the notice expires with the end of a month of the tenancy i.e. 31st January, 2001 as required under section 106 of the said Act.

6. In the aforesaid factual matrix, what was required to be proved by the plaintiff was that: (i) issuance; (ii) receipt; and (iii) contents of the notice. No other evidence was necessary to decree the suit. The fact in issue or document can be proved either by leading a direct positive evidence or through cross-examination of the opponent. Sometimes bad cross-examination of the opponent proves the case of the opponent itself. The case at hand is one of such cases.

7. Let me turn to the cross-examination of the witness of the plaintiff conducted by the counsel for the defendant- Corporation (petitioner herein). Reading of the cross-examination would make it clear that the witness produced by the plaintiff was extensively cross-examined by the defendant- Corporation on the validity of the notice issued under section 106 of T.P.Act. The

relevant part of the cross-examination of the witness reads as under:

> "..... I have gone through the notice given by advocate for plaintiff to defendant which is at Exh.C. Mr.Rizvi instructed advocate Shri Rizvi to issue notice Ex.C to defendant. I ;know personally that Mr.Rizvi, gave instructions to advocate R.V.Yadav. I was with Mr.Rizvi to Advocate R.V.Yadav. It is no doubt true that notice Exh.C does not terminate tenancy of the defendant. It is not true that the notice Exh.C is illegal.
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> (Emphasis supplied)

8. The aforesaid tenor of cross-examination would go to show that the contents of notice were put to the witness. His personal presence was tested. His personal knowledge was sought to be challenged. The witness stood to the test of cross-examiner. He proved his personal knowledge. He proved that he was knowing the facts and had personal knowledge of the facts in issue. The cross-examiner has done the job of the plaintiff's advocate, which he had failed to do. The notice was, thus, proved by the defendant- Corporation itself through their corss-examination of the witness examined by the plaintiff. In this view of the matter, the notice stood proved. The notice was found to be in consonance with the

provisions of section 106 of the T.P.Act. Receipt of the notice well in advance is not is dispute. The termination of tenancy is a legal effect of the notice received by the tenant. The notice, in fact, terminated tenancy irrespective of the admissions given by the witness. He is a layman. He did not know the consequence of the notice. He might have said that it does not terminate tenancy but that by itself will not take away legal effect of the notice.

9. In this view of the matter, no fault can be found with the judgment and order of the trial Court who has decreed the suit. The said judgment and decree has been rightly confirmed by the lower appellate Court. I do not see any infirmity in the impugned judgment and order of the Courts below.

10. One more submission advanced by learned counsel for the petitioner that the witness examined by the plaintiff was not authorised to depose for want of power of attorney in his favour is also devoid of any substance in view of what is observed in paras-7 and 8 (supra). Any person personally knowing the facts of the case can be

examined as witness before the Court. In the recent judgment of this Court in the case of **N.T.C.Ltd., New Delhi v. S.D.Sobharam**, 2005 (4) Mh.L.J. 675, the learned single Judge has held that provisions of C.P.C. do not apply to the case where the person appears in the evidence to depose on behalf of the party to the suit. It is well settled that as per the Evidence Act, the person who gives evidence as a witness ought to be a person conversant with the facts of the case. He is not required to be an authorised person. In evidence, the only requirement is that the person must be conversant with the facts of the case to come and depose before the Court. Reliance placed by learned counsel for the petitioner on various judgment including the judgment of Rajasthan High Court in the case of **Ram Prasad v. Hari Narain**, AIR 1998 Rajasthan 185 is misplaced. Even otherwise, since the case of the plaintiff has been proved by the cross-examiner of the defendant, the submission made in this behalf does not hold any water.

11. The petition is, thus, liable to be dismissed. In the result, petition is dismissed with no order as to costs.

12. At this stage, learned counsel appearing for the petitioner seeks 8 weeks time so as to enable the petitioner to approach the Apex Court.

13. The learned counsel appearing for the respondent/ original plaintiff has strongly opposed this prayer. However, I feel that in the interest of justice the petitioner is entitled to have 8 weeks time, however, on furnishing usual undertaking to this Court that in the event petitioner does not succeed before the Apex Court, the petitioner shall hand over vacant and peaceful possession of the premises to the plaintiff within one week from the date of decision and that during this period the petitioner shall not create any third party interest in the suit premises. Undertaking to be filed within two weeks from today. It is made clear that if the petitioner fails to file undertaking as indicated above within stipulated period, it would be open to the respondent-plaintiff to execute the decree in accordance with law.

(V.C.DAGA, J.)